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Subpart A—General Provisions

§ 217.1 Purpose, applicability, reservations of authority, and timing.

(a) *Purpose.* This part establishes minimum capital requirements and overall capital adequacy standards for entities described in paragraph (c)(1) of this section. This part includes methodologies for calculating minimum capital requirements, public disclosure requirements related to the capital requirements, and transition provisions for the application of this part.

(b) *Limitation of authority.* Nothing in this part shall be read to limit the authority of the Board to take action under other provisions of law, including action to address unsafe or unsound practices or conditions, deficient capital levels, or violations of law or regulation, under section 8 of the Federal Deposit Insurance Act, section 8 of the Bank Holding Company Act, or section 10 of the Home Owners' Loan Act.

(c) *Applicability.* (1) This part applies on a consolidated basis to every Board-regulated institution that is:

- (i) A state member bank;
- (ii) A bank holding company domiciled in the United States that is not

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subject to 12 CFR part 225, appendix C, provided that the Board may by order apply any or all of this part 217 to any bank holding company, based on the institution's size, level of complexity, risk profile, scope of operations, or financial condition; or

(iii) A covered savings and loan holding company domiciled in the United States. For purposes of compliance with the capital adequacy requirements and calculations in this part, savings and loan holding companies that do not file the FR Y-9C should follow the instructions to the FR Y-9C.

(2) *Minimum capital requirements and overall capital adequacy standards.* Each Board-regulated institution must calculate its minimum capital requirements and meet the overall capital adequacy standards in subpart B of this part.

(3) *Regulatory capital.* Each Board-regulated institution must calculate its regulatory capital in accordance with subpart C of this part.

(4) *Risk-weighted assets.* (i) Each Board-regulated institution must use the methodologies in subpart D of this part (and subpart F of this part for a market risk Board-regulated institution) to calculate standardized total risk-weighted assets.

(ii) Each advanced approaches Board-regulated institution must use the methodologies in subpart E (and subpart F of this part for a market risk Board-regulated institution) to calculate advanced approaches total risk-weighted assets.

(5) *Disclosures.* (i) Except for an advanced approaches Board-regulated institution that is making public disclosures pursuant to the requirements in subpart E of this part, each Board-regulated institution with total consolidated assets of \$50 billion or more must make the public disclosures described in subpart D of this part.

(ii) Each market risk Board-regulated institution must make the public disclosures described in subpart F of this part.

(iii) Each advanced approaches Board-regulated institution must make the public disclosures described in subpart E of this part.

(d) *Reservation of authority.* (1) *Additional capital in the aggregate.* The

Board may require a Board-regulated institution to hold an amount of regulatory capital greater than otherwise required under this part if the Board determines that the Board-regulated institution's capital requirements under this part are not commensurate with the Board-regulated institution's credit, market, operational, or other risks.

(2) *Regulatory capital elements.* (i) If the Board determines that a particular common equity tier 1, additional tier 1, or tier 2 capital element has characteristics or terms that diminish its ability to absorb losses, or otherwise present safety and soundness concerns, the Board may require the Board-regulated institution to exclude all or a portion of such element from common equity tier 1 capital, additional tier 1 capital, or tier 2 capital, as appropriate.

(ii) Notwithstanding the criteria for regulatory capital instruments set forth in subpart C of this part, the Board may find that a capital element may be included in a Board-regulated institution's common equity tier 1 capital, additional tier 1 capital, or tier 2 capital on a permanent or temporary basis consistent with the loss absorption capacity of the element and in accordance with §217.20(e).

(3) *Risk-weighted asset amounts.* If the Board determines that the risk-weighted asset amount calculated under this part by the Board-regulated institution for one or more exposures is not commensurate with the risks associated with those exposures, the Board may require the Board-regulated institution to assign a different risk-weighted asset amount to the exposure(s) or to deduct the amount of the exposure(s) from its regulatory capital.

(4) *Total leverage.* If the Board determines that the leverage exposure amount, or the amount reflected in the Board-regulated institution's reported average total consolidated assets, for an on- or off-balance sheet exposure calculated by a Board-regulated institution under §217.10 is inappropriate for the exposure(s) or the circumstances of the Board-regulated institution, the Board may require the Board-regulated institution to adjust this exposure amount in the numerator

and the denominator for purposes of the leverage ratio calculations.

(5) *Consolidation of certain exposures.* The Board may determine that the risk-based capital treatment for an exposure or the treatment provided to an entity that is not consolidated on the Board-regulated institution's balance sheet is not commensurate with the risk of the exposure and the relationship of the Board-regulated institution to the entity. Upon making this determination, the Board may require the Board-regulated institution to treat the exposure or entity as if it were consolidated on the balance sheet of the Board-regulated institution for purposes of determining the Board-regulated institution's risk-based capital requirements and calculating the Board-regulated institution's risk-based capital ratios accordingly. The Board will look to the substance of, and risk associated with, the transaction, as well as other relevant factors the Board deems appropriate in determining whether to require such treatment.

(6) *Other reservation of authority.* With respect to any deduction or limitation required under this part, the Board may require a different deduction or limitation, provided that such alternative deduction or limitation is commensurate with the Board-regulated institution's risk and consistent with safety and soundness.

(e) *Notice and response procedures.* In making a determination under this section, the Board will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 263.202.

(f) *Timing.* (1) Subject to the transition provisions in subpart G of this part, an advanced approaches Board-regulated institution that is not a savings and loan holding company must:

(i) Except as described in paragraph (f)(1)(ii) of this section, beginning on January 1, 2014, calculate advanced approaches total risk-weighted assets in accordance with subpart E and, if applicable, subpart F of this part and, beginning on January 1, 2015, calculate standardized total risk-weighted assets in accordance with subpart D and, if applicable, subpart F of this part;

(ii) From January 1, 2014 to December 31, 2014:

(A) Calculate risk-weighted assets in accordance with the general risk-based capital rules under 12 CFR parts 208 or 225, appendix A, and, if applicable, appendix E (state member banks or bank holding companies, respectively)¹ and substitute such risk-weighted assets for standardized total risk-weighted assets for purposes of § 217.10;

(B) If applicable, calculate general market risk equivalent assets in accordance with 12 CFR parts 208 or 225, appendix E, section 4(a)(3) (state member banks or bank holding companies, respectively) and substitute such general market risk equivalent assets for standardized market risk-weighted assets for purposes of § 217.20(d)(3); and

(C) Substitute the corresponding provision or provisions of 12 CFR parts 208 or 225, appendix A, and, if applicable, appendix E (state member banks or bank holding companies, respectively) for any reference to subpart D of this part in: § 217.121(c); § 217.124(a) and (b); § 217.144(b); § 217.154(c) and (d); § 217.202(b) (definition of covered position in paragraph (b)(3)(iv)); and § 217.211(b);²

(iii) Beginning on January 1, 2014, calculate and maintain minimum capital ratios in accordance with subparts A, B, and C of this part, provided, however, that such Board-regulated institution must:

¹For the purpose of calculating its general risk-based capital ratios from January 1, 2014 to December 31, 2014, an advanced approaches Board-regulated institution shall adjust, as appropriate, its risk-weighted asset measure (as that amount is calculated under 12 CFR parts 208 and 225, and, if applicable, appendix E (state member banks or bank holding companies, respectively) in the general risk-based capital rules) by excluding those assets that are deducted from its regulatory capital under § 217.22.

²In addition, for purposes of § 217.201(c)(3), from January 1, 2014 to December 31, 2014, for any circumstance in which the Board may require a Board-regulated institution to calculate risk-based capital requirements for specific positions or portfolios under subpart D of this part, the Board will instead require the Board-regulated institution to make such calculations according to 12 CFR parts 208 and 225, appendix A and, if applicable, appendix E (state member banks or bank holding companies, respectively).

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(A) From January 1, 2014 to December 31, 2014, maintain a minimum common equity tier 1 capital ratio of 4 percent, a minimum tier 1 capital ratio of 5.5 percent, a minimum total capital ratio of 8 percent, and a minimum leverage ratio of 4 percent; and

(B) From January 1, 2015 to December 31, 2017, an advanced approaches Board-regulated institution:

(1) Is not required to maintain a supplementary leverage ratio; and

(2) Must calculate a supplementary leverage ratio in accordance with §217.10(c), and must report the calculated supplementary leverage ratio on any applicable regulatory reports.

(2) Subject to the transition provisions in subpart G of this part, a Board-regulated institution that is not an advanced approaches Board-regulated institution or a savings and loan holding company that is an advanced approaches Board-regulated institution must:

(i) Beginning on January 1, 2015, calculate standardized total risk-weighted assets in accordance with subpart D, and if applicable, subpart F of this part; and

(ii) Beginning on January 1, 2015, calculate and maintain minimum capital ratios in accordance with subparts A, B and C of this part, provided, however, that from January 1, 2015 to December 31, 2017, a savings and loan holding company that is an advanced approaches Board-regulated institution:

(A) Is not required to maintain a supplementary leverage ratio; and

(B) Must calculate a supplementary leverage ratio in accordance with §217.10(c), and must report the calculated supplementary leverage ratio on any applicable regulatory reports.

(3) Beginning on January 1, 2016, and subject to the transition provisions in subpart G of this part, a Board-regulated institution is subject to limitations on distributions and discretionary bonus payments with respect to its capital conservation buffer and any applicable countercyclical capital buffer amount, in accordance with subpart B of this part.

(4) This part shall not apply until January 1, 2015, to any Board-regulated institution that is not an advanced approaches Board-regulated institution

or to any covered savings and loan holding company.

§217.2 Definitions.

As used in this part:

Additional tier 1 capital is defined in §217.20(c).

Advanced approaches Board-regulated institution means a Board-regulated institution that is described in §217.100(b)(1).

Advanced approaches total risk-weighted assets means:

(1) The sum of:

(i) Credit-risk-weighted assets;

(ii) Credit valuation adjustment (CVA) risk-weighted assets;

(iii) Risk-weighted assets for operational risk; and

(iv) For a market risk Board-regulated institution only, advanced market risk-weighted assets; minus

(2) Excess eligible credit reserves not included in the Board-regulated institution's tier 2 capital.

Advanced market risk-weighted assets means the advanced measure for market risk calculated under §217.204 multiplied by 12.5.

Affiliate with respect to a company, means any company that controls, is controlled by, or is under common control with, the company.

Allocated transfer risk reserves means reserves that have been established in accordance with section 905(a) of the International Lending Supervision Act, against certain assets whose value U.S. supervisory authorities have found to be significantly impaired by protracted transfer risk problems.

Allowances for loan and lease losses (ALLL) means valuation allowances that have been established through a charge against earnings to cover estimated credit losses on loans, lease financing receivables or other extensions of credit as determined in accordance with GAAP. ALLL excludes "allocated transfer risk reserves." For purposes of this part, ALLL includes allowances that have been established through a charge against earnings to cover estimated credit losses associated with off-balance sheet credit exposures as determined in accordance with GAAP.

Asset-backed commercial paper (ABCP) program means a program established primarily for the purpose of issuing